

FILED

February 11, 2005

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III
Clerk

No. 04-40664

D.C. Docket No. 6:03-CV-318

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

MAR 10 2005

SHANIKWA JOHNSON

DAVID J. MALAND, CLERK

Plaintiff - Appellee

BY
DEPUTY

v.

MARK WATERS, Etc; ET AL

Defendants

MARK WATERS, Deputy Constable

Defendant - Appellant

Appeal from the United States District Court for the
Eastern District of Texas, Tyler.

Before JOLLY and DAVIS, Circuit Judges, and ENGELHARDT, District
Judge*.

JUDGMENT

This cause was considered on the record on appeal and the
briefs on file.

It is ordered and adjudged that the appeal is dismissed for
lack of jurisdiction.

IT IS FURTHER ORDERED that defendant-appellant pay to
plaintiff-appellee the costs on appeal to be taxed by the Clerk
of this Court.

ISSUED AS MANDATE: MAR 07 2005

*District Judge of the Eastern District of Louisiana,
sitting by designation.

A true copy
Test

Clerk, U.S. Court of Appeals, Fifth Circuit

By Charles R. Fulbruge III
Deputy

New Orleans, Louisiana MAR 07 2005

United States Court of Appeals

Fifth Circuit

F I L E D

February 11, 2005

Charles R. Fulbruge III
Clerk

No. 04-40664

SHANIWA JOHNSON

Plaintiff - Appellee

VERSUS

MARK WATERS, Etc; ET AL

Defendants

MARK WATERS, Deputy Constable

Defendant - Appellant

Appeal from the United States District Court
For the Eastern District of Texas
6:03-CV-318

Before JOLLY and DAVIS, Circuit Judges, and ENGELHARDT*, District Judge.

PER CURIAM:**

In this appeal from denial of qualified immunity, we agree with the district court that questions of fact are presented as to whether the defendant Constable Waters used excessive force in

*District Judge of the Eastern District of Louisiana, sitting by designation.

**Pursuant to 5th CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th CIR. R. 47.5.4.

seizing the plaintiff. Because genuine issues of material fact are presented we have no jurisdiction to consider this appeal.

Appeal dismissed.